

EXECUTIVE CHAMBERS

HONOLULU

July 8, 2008

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 2867

Honorable Members
Twenty-Fourth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval Senate Bill No. 2867 entitled "A Bill for an Act Relating to the Hawaii Public Procurement Code."

The purposes of Senate Bill No. 2867 are to deter governmental agencies from knowingly including false information or misrepresentations in its solicitations by causing such solicitation to be nullified, and to deter bidders and their subcontractors from knowingly including false information or misrepresentations in their bids by not awarding them the contract and imposing a one-year suspension.

The intent of the bill to penalize those that include false information or misrepresentations in their solicitations is laudable. However, the bill is objectionable because it creates confusion and ambiguity in the State Procurement Code. The implementing provisions are not clearly articulated, are internally inconsistent, and conflict with existing provisions of the State Procurement Code. The resulting confusion will invite protests regarding the meaning and intent of the amendments and cause additional delay in the procurement process. For example, the bill confuses the terms bidder and offeror and references a section of the Procurement Code dealing with contract breaches and tries to apply that section to non-award of a contract. The bill makes false information captured

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in a bid confidential, but since the false information was the basis for not selecting the firm, it should not be kept secret.

The bill is also objectionable because it creates hardships for governmental bodies soliciting contracts. Under this bill, disgruntled bidders easily could allege that the winning bidder submitted false information or misrepresentations. The allegation will cause the award of the contract to be stayed while the government investigates the allegation. In other situations, the government could avail itself of section 103D-701 and request the chief procurement officer to allow it to proceed with the award because it is necessary to award the contract to protect the substantial interests of the State. However, if the winning bidder is alleged to have submitted false information or misrepresentations, then even were it necessary to award the contract to protect the substantial interests of the State, the government could not proceed.

For the foregoing reasons, I am returning Senate Bill No. 2867 without my approval.

Respectfully,

A handwritten signature in black ink, appearing to read "Linda Lingie", written over a circular stamp.

LINDA LINGIE
Governor of Hawaii